

**DOCKET NUMBER 110**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
CHIEF JUDGE PETER W. BOWIE, PRESIDING

FRANCIS J. LOPEZ

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CASE NO. 05-05926-PB

1) STATUS CONFERENCE ON INVOLUNTARY PETITION AND ANSWER

2) PETITIONING CREDITORS' MOTION FOR AN ENFORCEMENT  
ORDER: A ) IMPOSING MONETARY SANCTIONS AGAINST THE DEBTOR;  
AND, B) IMPOSING EVIDENTIARY SANCTIONS AGAINST THE  
DEBTOR.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SAN DIEGO, CALIFORNIA  
MONDAY, JUNE 25, 2007

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**APPEARANCES**

**M. JONATHAN HAYES**

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**L. SCOTT KEEHN**

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SAN DIEGO, CALIFORNIA, MONDAY, JUNE 25, 2007 , 10:00 A.M.

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THE CLERK: IN THE MATTER OF FRANCIS J. LOPEZ. TWO MATTERS: CONTINUED STATUS CONFERENCE ON INVOLUNTARY PETITION AND ANSWER; AND, PETITIONING CREDITORS' MOTION FOR AN ENFORCEMENT ORDER (1) IMPOSING MONETARY SANCTIONS AGAINST THE DEBTOR; AND, (2) IMPOSING EVIDENTIARY SANCTIONS AGAINST THE DEBTOR. APPEARANCES, PLEASE.

MR. KEEHN: GOOD MORNING, YOUR HONOR. SCOTT KEEHN APPEARING ON BEHALF OF THE PETITIONING CREDITORS.

MR. HAYES: GOOD MORNING, YOUR HONOR. JOHN HAYES APPEARING FOR THE DEBTOR -- ALLEGED DEBTOR.

MR. KEEHN: YOUR HONOR, THIS PARTICULAR ODYSSEY BEGAN BEFORE THANKSGIVING, IF YOU CAN BELIEVE THAT, BACK ON NOVEMBER 3RD.

THE COURT: THAT'S NOTHING AT ALL COMPARED TO ADAMS.

MR. KEEHN: YOU KNOW, I WAS HOPING YOU WOULDN'T JUST CONFINE YOURSELF TO THIS RECORD. AND ALSO THE CASE BEFORE, THERE WERE THIRTEEN MEET AND CONFER LETTERS; AND WE DON'T MEET THAT RECORD, EITHER.

BUT THIS IS AN INVOLUNTARY PETITION. AND WE WERE HOPING TO MOVE IT ALONG WITH A LITTLE MORE ALACRITY THAN YOU MIGHT EXPECT IN --

THE COURT: SO YOU'RE SAYING IT REMAINS INVOLUNTARY?

MR. KEEHN: OH, VERY INVOLUNTARY.

WHAT WE HAVE HERE IN RESPONSE TO OUR REQUEST FOR DISCOVERY

THAT WERE PROMULGATED NOW SEVEN MONTHS AGO; AT FIRST THERE WAS NO RESPONSE AT ALL IN THE APPROPRIATE PERIOD. ALL OBJECTIONS WERE WAIVED. AND WHEN WE MOVED FOR MOTION TO COMPEL THE SANCTIONS. COUNSEL COMES IN AND APOLOGIZES FOR DEBTOR, BEMOANS THE FACT THAT WE'RE ASKING FOR A LOT OF INFORMATION; AND AGREES TO THE COURT'S RULING THAT SUPPLEMENTAL RESPONSES SHOULD BE PROVIDED NOT LATER THAN THE 21ST OF MAY.

WELL, ON THE 21ST OF MAY -- AND, ACTUALLY NOTHING HAPPENED BETWEEN THE TIME THE COURT MADE THAT -- GAVE THE DEBTOR THAT SECOND CHANCE. NOTHING HAPPENED BETWEEN THEN AND MAY 21ST UNTIL SHORTLY AFTER SEVEN IN THE EVENING WHEN MR. HAYES E-MAILED MY E-MAIL WITH A REQUEST FOR A DAY OR TWO EXTENSION.

WELL, I DIDN'T HAVE ANY PROBLEM WITH A DAY OR TWO EXTENSION, AS LONG AS I GET AN EQUAL EXTENSION AND TIME TO REPLY. AS SOON AS I SAW THE E-MAIL THE FOLLOWING MORNING, I RELAYED THAT INFORMATION TO MR. HAYES.

IN RESPONSE TO THAT, I RECEIVED ANOTHER E-MAIL THAT SAID, NO, WE'RE NOT GOING TO PROVIDE ANYTHING ELSE AND WE'RE WITHDRAWING OUR REQUEST FOR EXTENSION.

SO ONCE AGAIN, WE HAVE THE TIME PERIOD PASSING AND, OF COURSE, WE WERE PREJUDICED, NOT IN AN OVERWHELMING DEGREE, BUT NOTICEABLY BY THE FACT THAT IN RESPONSE TO THE FIRST E-MAIL WE HAD ANTICIPATED THAT WE WOULD NOT HAVE TO MEET THE ORIGINAL DEADLINE FOR RESPONSE.

SO, UPON RECEIVING THE WITHDRAWAL E-MAIL, WE QUICKLY

REGROUPED AND DID OUR REPLY -- DID OUR MOTION, RATHER. WE HAD ONLY A FEW DAYS TO DO THAT, GIVEN THE SETTING OF THIS PARTICULAR HEARING IN ORDER TO GIVE AN ADEQUATE TIME TO RESPOND. SO WE DID THAT.

AND WE HAVE WHAT HAS BECOME A FAMILIAR PATTERN. WE HAVE, WHAT PURPORTS TO BE RESPONSES GIVEN ON BEHALF OF MR. LOPEZ; AND, IN FACT, THEY'RE NOT REALLY GOOD-FAITH RESPONSES AT ALL. THEY PROVIDE SOME PAPER, MOST OF WHICH WAS PLEADINGS IN CASES THAT MR. LOPEZ HAD EVERY REASON TO KNOW THAT WE ALREADY HAD AND SO WOULD BE COMPLETELY USELESS.

NOW, THIS PARTICULAR DISCOVERY DISPUTE CREATES A DYNAMIC THAT'S DIFFERENT FROM MOST DISCOVERY DISPUTES, BECAUSE MOST DISCOVERY DISPUTES ARISE IN TRADITIONAL LITIGATION. AND TRADITIONAL LITIGATION IS ALWAYS LOOKING BACK AT AN EVENT AND IS STATIC, IN TERMS OF WHERE THE LIABILITIES WILL FALL. BECAUSE THEY DEPEND ON WHAT HAPPENED BACK WHEN WHATEVER INCIDENT OCCURRED, WHATEVER COURSE OF CONDUCT OCCURRED THAT GAVE RISE TO THE TRADITIONAL LITIGATION. SO YOU'RE ALWAYS LOOKING BACKWARDS AND YOU'RE NOT REALLY CONCERNED ABOUT WHAT'S HAPPENING ON A GOING-FORWARD BASIS.

THE DIFFERENT DYNAMIC THAT'S CREATED IN EVERY INVOLUNTARY PETITION IS THE INVOLUNTARY GAP DYNAMIC. BECAUSE, WHILE DELAY IS ALWAYS PREJUDICIAL TO BRINGING A MATTER TO ITS QUICK AND COST EFFECTIVE CONCLUSION, IT HAS AN AUXILIARY PREJUDICE IN INVOLUNTARY CASES BECAUSE THE DEBTOR IS FREE TO CREATE OBLIGATIONS THAT WILL BECOME INVOLUNTARY GAP

CLAIMS AND LEAPFROG AHEAD IN PRIORITY TO THE CLAIMS OF THE CREDITORS THAT BROUGHT THE ACTION.

AND THAT PARTICULAR FORM OF PREJUDICE IS RENDERED ALL THE MORE DISTURBING BECAUSE THERE'S NO WAY TO MONITOR IT, NO WAY TO QUANTIFY IT. MR. LOPEZ IS OUT THERE. MAYBE HE'S NOT CREATING INVOLUNTARY GAP CLAIMS AND PERHAPS HE IS. BUT THE RISK IS THAT THE UTILITY OF THE REMEDY OF INVOLUNTARY BANKRUPTCY AS A CREDITOR'S REMEDY IS SUBJECT TO THIS FORM OF DILUTION, SIMPLY BECAUSE THE ALLEGED DEBTOR REFUSES -- I WANT TO UNDERSCORE THAT -- REFUSES TO COMPLY WITH THE DISCOVERY IN GOOD FAITH.

WE ARE TRYING TO NARROW THE ISSUES WITH THE EVIDENCE THAT'S AVAILABLE SO THAT WE CAN PROCEED IN THE SECOND PHASE, AS WE DID IN THE FIRST, TO PRESENT THE ISSUES TO THE COURT IN A SUMMARY JUDGMENT FASHION, BECAUSE WE THINK THIS CASE IS AMENABLE TO SUMMARY JUDGMENT.

AND MR. LOPEZ IS JUST VERY ADROITLY BLOCKING THAT WITH THIS PASSIVE/AGGRESSIVE TACTIC OF HIS, WHERE HE DOESN'T REPLY AT ALL UNTIL HIS BACK IS ABSOLUTELY TO THE WALL AND SOME DRACONIAN CONSEQUENCE MIGHT BEFALL HIM. AND THEN HE'LL RESPOND, BUT HE WON'T REALLY RESPOND IN GOOD FAITH. HE GIVES YOU A PARITY OF GOOD-FAITH, THAT DOES NOT ADVANCE THE PURPOSES OF DISCOVERY.

NOW, WE SHOULDN'T HAVE TO WAIT UNTIL HIS BACK IS AGAINST THE WALL TO GET OUR RESPONSES. WE'RE ENTITLED TO OUR RESPONSES THIRTY DAYS AFTER THEY'RE SERVED, THIRTY-THREE WHEN THEY'RE SERVED BY MAIL.

AND WE'RE LONG PAST THAT WITH THESE DISCOVERY REQUESTS THAT WERE PROMULGATED BACK IN NOVEMBER. AND AS THE OBJECTION DISCLOSES, THE ALLEGED DEBTOR IS WELL AWARE THAT WE'RE DOING, ONCE AGAIN, WHAT WE DID IN THE FIRST PHASE; WE'RE USING THE WRITTEN DISCOVERY AS, TO SORT OF TEE UP THE ISSUES FOR OUR, DEPOSITION EXAMINATION, WHICH IS THE NORMAL WAY TO PROCEED.

SO BY HINDERING AND DELAYING THE DISCOVERY PROCESS IN THE WRITTEN PHASE, HE NATURALLY DEFERS THE ORAL EXAMINATION, WHICH IN TURN DEFERS, ONCE AGAIN, THE DAY OF RECKONING. AND ALL THE WHILE HE'S FREE TO BE OUT THERE INCURRING FURTHER GAP CLAIMS.

SO I THINK THAT WHAT WE'VE SUGGESTED IN OUR PAPERS IS THE APPROPRIATE RESPONSE. NUMBER ONE, THE DEFERRED MONETARY SANCTIONS THAT THE COURT ORIGINALLY AWARDED OF \$42 000 -- EXCUSE ME, I'M DREAMING -- \$4,242. SHOULD BE IMPOSED.

THE -- I DON'T THINK THAT THE RESULT THE COURT HAD HOPED TO ACHIEVE BY DEFERRING IT HAS BEEN ACHIEVED. I DON'T THINK IT EVER WILL BE ACHIEVED. I THINK THAT THIS IS JUST MR. LOPEZ'S LITIGATION TACTIC; HALT, HINDER AND DELAY AND MAYBE I'LL HAVE TO ANSWER SOMEDAY.

THE EVIDENTIARY SANCTIONS THAT WE'VE REQUESTED, I THINK, ARE APPROPRIATE. AND THEY WILL FACILITATE THE PURPOSE OF DISCOVERY, BECAUSE THEY NARROW THE ISSUES FOR US, EVEN WITHOUT THE COOPERATION OF THE ALLEGED DEBTOR.

SO WE WOULD REQUEST THAT THE EVIDENTIARY SANCTIONS BE



IMPOSED AS REQUESTED, AND THAT THE MONETARY SANCTION BE AWARDED FORTHWITH, WITH A DATE CERTAIN ESTABLISHED AS TO WHEN THAT SECTION SHOULD BE PAID.

THE COURT: MR. HAYES.

MR. HAYES: YOUR HONOR, THANK YOU. I HAVE A COUPLE OF COMMENTS.

THE FIRST ONE IS, I WANTED TO COMMENT ON THIS, THE REQUEST I'VE MADE OF MR. KEEHN FOR ANOTHER ONE OR TWO DAYS. I'VE HAD -- MR. LOPEZ LIVES IN FLORIDA, AND I HAVE A HARD TIME COMMUNICATING WITH HIM. WE COMMUNICATE BY E-MAIL AND I HAVE HIS CELL PHONE, AND INEVITABLY, I CATCH HIM WHEN HE'S PICKING HIS KIDS UP OR HE'S IN A STORE OR SOMETHING AND THERE'S THE THREE-HOUR TIME GAP.

ANYWAY, I SPOKE TO HIM VERY BRIEFLY A COUPLE OF TIMES. I SAID, LOOK, WE HAVE TO GET THEM MORE DOCUMENTS.

THERE'S -- MR. KEEHN SENT ME THIS LETTER, WHAT ARE WE GOING TO DO? WE DISCUSSED IT REAL QUICKLY. AND FINALLY, THE TIME CAME WHERE HE ABSOLUTELY HAD TO FILE A RESPONSE, AND THAT'S WHEN I SENT THE E-MAIL TO MR. KEEHN SAYING, GIVE ME ANOTHER DAY OR TWO.

THE FOLLOWING DAY I SPOKE TO MR. LOPEZ AT GREAT LENGTHS. AND WE WENT THROUGH THE LETTER ONE BY ONE. AND I MEAN, THERE ISN'T ANYTHING ELSE WE CAN COME UP WITH. THERE ISN'T ANY OTHER DOCUMENTS EXCEPT THIS ISSUE WITH THE WIFE. THERE ISN'T ANY DOCUMENTS THAT HAVEN'T BEEN TURNED OVER. THERE ISN'T ANY, ANY MORE EXPLANATION OR, OR, MORE DETAILS THAT WE COULD GIVE, OTHER THAN REALLY REPEAT INFORMATION

THAT'S ON VARIOUS -- OF THE MANY STATEMENTS THAT HAVE BEEN TURNED OVER I BELIEVE MANY TIMES BY NOW.

BUT, ADDRESSING THE MOTION, THE MOTION HAS TWO PARTS. ONE IS GRANT THESE SANCTIONS, WHICH I, FRANKLY, BELIEVE HAS ALWAYS BEEN THE GOAL. AND THE SECOND IS THESE EVIDENTIARY SANCTIONS.

AS FAR AS THE SANCTIONS, THE \$4000. I JUST WANT TO SAY AGAIN, I JUST DON'T THINK THERE'S ANY OTHER DOCUMENTS THAT CAN BE TURNED OVER OTHER THAN MRS. LOPEZ'S DOCUMENTS, THERE ARE NO OTHER DOCUMENTS THAT CAN BE TURNED OVER THAT HAVEN'T ALREADY BEEN TURNED OVER.

I BROUGHT MR. LOPEZ'S FIRST DEPOSITION. IT'S 240-SOMETHING PAGES. THIS IS WELL MORE THAN A YEAR AGO. THE REST OF THESE PAPERS ARE EXHIBITS. EVERY STATEMENT OF EVERY ONE OF HIS BILLS OF THE TWENTY OR SO CREDITORS ARE ALL CONSUMER DEBTS. THIS IS WELL MORE THAN A YEAR OLD. MR. KEEHN HAS SENT OUT SEVERAL SUBPOENAS. I'M ACTUALLY NOT SURE WHAT HE'S GOTTEN FROM THOSE. WE PROVIDED MORE DOCUMENTS TWICE IN THIS GO AROUND. IF MR. KEEHN REALLY WANTED TO GET MOVING WITH THIS, JUST TAKE THE DEPOSITION AGAIN. HE'S BEEN TELLING ME HE'S GOING TO TAKE THIS DEPOSITION. HE SOMEHOW CAN'T BECAUSE HE REALLY -- THERE'S SOME MAGICAL PIECE OF PAPER THAT I'M NOT CLEAR ABOUT THAT HE HASN'T GOTTEN YET; AND THEREFORE, HE CAN'T GO FORWARD. THAT'S JUST RIDICULOUS.

WITH RESPECT TO THE DOCUMENTS IN MRS. LOPEZ'S POSSESSION, I'VE ACTUALLY NEVER MET MRS. LOPEZ. BUT I MEAN, MY WIFE

HAS A CHECKING ACCOUNT AND SHE CARRIES THE CHECKBOOK AROUND IN HER PURSE. AND I'D BE LOOKING FOR A DIVORCE ATTORNEY IF I WENT INTO HER PURSE AND FOUND HER CHECKBOOK AND STARTED SENDING OFF INFORMATION SOMEBODY HAPPENED TO BE SUING ME.

THE COURT: SO YOU'RE CONTENDING THIS IS ALL SEPARATE PROPERTY, AND HE HAS NO INTEREST WHATSOEVER IN THE FUNDS THAT SHE ADMINISTERS OR THE DEBT SHE'S INCURRED WHETHER IT'S A LEHMAN BROTHERS, OR THE MORTGAGE ON THE HOUSE OR ANY OF THOSE KINDS OF THINGS?

MR. HAYES: I DON'T KNOW IF I'D GET INTO WHETHER IT'S COMMUNITY PROPERTY OR NOT. BUT IF THEY WANT, I MEAN, THEY CAN GO AFTER HER. THEY CAN SUBPOENA HER OR THEY CAN COME IN WITH SOME SORT OF EVIDENCE OF WHY THEY HAVE THE RIGHT TO MAKE MR. LOPEZ --

THE COURT: SO WHAT'S YOUR THEORY, WHAT'S YOUR THEORY ON WHY SHE DOESN'T HAVE TO PROVIDE AN ANSWER WITH RESPECT TO WHAT SHE HAS OR HOLDS OR PAYS, PARTICULARLY, IF HE'S GOT SOME OBLIGATION OR LIABILITY ON IT?

MR. HAYES. THEY HAVEN'T ASKED HER. THEY'RE ASKING HIM.

THE COURT: NO. THAT'S NOT MY QUESTION. MY QUESTION IS, WHAT'S YOUR THEORY FOR WHY HE DOESN'T HAVE TO ANSWER THAT QUESTION?

MR. HAYES: THAT'S HER RIGHT TO PRIVACY.

THE COURT: SO IT'S HER RIGHT TO PRIVACY, BECAUSE IT'S SOME SEPARATE INTEREST OF HERS OR WHAT?

WHERE DOES SHE HAVE A RIGHT TO PRIVACY ON SOMETHING THAT

YOU SAY YOU DON'T GET TO THE COMMUNITY PROPERTY QUESTION. I MEAN, HE'S GOT A COMMUNITY PROPERTY INTEREST IN IT, IF HE'S GOT A STATE STATUTORY RIGHT TO CO-MANAGEMENT OF COMMUNITY ASSETS OR ANYTHING ELSE THAT I HAVE NO IDEA WHAT FLORIDA LAW PROVIDES.

I'M ASKING YOU WHAT YOUR THEORY IS FOR WHY HE DOESN'T HAVE TO ANSWER IT?

MR. HAYES: WELL, FOR ONE THING, FLORIDA IS NOT COMMUNITY PROPERTY. AND I DON'T KNOW HOW FLORIDA LAW IS. BUT WHAT I FOCUSED ON IS MR. LOPEZ, GO TO YOUR WIFE AND GET THESE DOCUMENTS.

THE COURT: NO, POSSESSION -- YOU KNOW, WHAT DOES HE HAVE IN HIS POSSESSION OR CONTROL? WHAT DOES HE HAVE? HAS HE PRODUCED EVERYTHING THAT'S IN HIS POSSESSION OR CONTROL WITH RESPECT TO THAT?

MR. HAYES: OH, ABSOLUTELY. BUT THAT'S --

THE COURT: AND THAT'S INCLUDING AS TO HIS LIABILITY WITH RESPECT TO IT?

MR. HAYES: YES. AS FAR AS I KNOW. BUT THAT DOES RAISE THE QUESTION OF DOES -- IS WHAT'S IN HIS WIFE'S PURSE IN HIS POSSESSION OR CONTROL? I MEAN, THAT'S WHAT HE'S TELLING ME. I CAN'T --

THE COURT: NO. YOUR ANSWER IS, HE HAS NO INTEREST OR OBLIGATION IN THE LEHMAN BROTHERS OR THE MORTGAGE OR WHATEVER IT IS, THEN WHY DON'T YOU AGREE TO THOSE EVIDENTIARY SANCTIONS AS WELL? YOU SAY HE'S TURNED OVER EVERYTHING.

MR. HAYES: WELL, EVERYTHING THAT'S IN HIS POSSESSION OR HIS CONTROL WITHOUT GETTING DIVORCED; YES.

THE COURT: THEN THE ANSWER, IT SEEMS TO ME, IS THAT YOU AGREE TO THE EVIDENTIARY SANCTIONS, SAID THAT HE CANNOT PRODUCE ANYTHING HE HAS NOT ALREADY PRODUCED, COME TIME OF TRIAL WITH RESPECT TO THE ISSUE THAT WE'LL BE LITIGATING IN THIS PHASE 2 OF THIS ISSUE.

MR. HAYES: I MIGHT DO THAT. I HADN'T THOUGHT OF IT, MYSELF.

I WAS FOCUSING ON THE MOTION, WHICH BASICALLY ASKED YOU TO GRANT SUMMARY JUDGMENT TODAY. BUT I WOULD AGREE WITH THE THEORY THAT THINGS -- HE SHOULDN'T BE ABLE TO COME IN WITH SOMETHING AFTER THIS, OR HE SHOULDN'T BE ABLE TO, "QUOTE," "UNQUOTE," FIND SOMETHING, YOU KNOW, TWO DAYS BEFORE TRIAL.

AND I DO BELIEVE EVERYTHING'S BEEN TURNED OVER.

THE COURT: WELL, THAT'S WHAT MR. KEEHN IS -- I HAVE NO IDEA WHAT HIS STRATEGY IS, BUT THAT'S AT LEAST WHAT HE'S ASKING FOR IN THE CONTEXT OF THIS MOTION, BECAUSE HE WANTS TO BE ABLE TO CLOSE THE BOOK AND THEN GO TAKE YOUR CLIENT'S DEPO KNOWING THAT YOUR CLIENT IS NOW PRECLUDED FROM STEPPING UP AND SAYING OH, BUT HERE'S THIS, AND HERE'S THIS AND HERE'S THAT; AND NOT EVER HAVING HAD A CHANCE TO LOOK AT IT OR INDEPENDENTLY VALIDATE IT FROM THIRD PARTIES OR ANY OF THOSE KINDS OF THINGS.

YOU WOULDN'T WALK INTO A DEPO BLIND THAT WAY. I'M CONFIDENT OF THAT.

MR. HAYES: NO. YOU KNOW, WHAT I WAS FOCUSING ON IS THE MOTION SAYS ELIMINATE ALL EVIDENCE ENTIRELY REGARDING EACH ONE OF THESE CATEGORIES; NOT JUST ELIMINATE -- NOT JUST HAVE AN EVIDENTIARY SANCTION THAT WE CAN'T FIND, "QUOTE," "UNQUOTE," FIND MORE DOCUMENTS.

I THINK I WOULD AGREE TO THAT. WHATEVER DOCUMENTS HAVEN'T BEEN TURNED OVER UP TO NOW, I WOULD AGREE TO THAT.

THE COURT: OKAY.

MR. HAYES: I'M NOT SURE I -- YOU KNOW, HE JUST FOUND A JOB AND HE DOESN'T HAVE \$4,400. AND I DON'T KNOW WHAT ELSE I CAN SAY.

YOU SAID, YOU'RE NOT SURE WHAT MR. KEEHN'S STRATEGY IS. I MEAN, IF THEY REALLY WANTED THIS CASE TO BE FINISHED, THEY WOULD HAVE TAKEN HIS DEPOSITION SIX OR EIGHT MONTHS AGO.

THE COURT: I WOULDN'T HAVE. I WAS A LITIGATOR FOR A BUNCH OF YEARS. I'M NOT WALKING INTO A DEPOSITION WHEN THERE'S A WHOLE BUNCH OF DOCUMENTS OUT THERE AND HAVE THEM SURPRISE ME.

MR. HAYES: WELL, I DON'T THINK THERE ARE.

THE COURT: WELL --

MR. HAYES: FOR MONTHS THERE HAVEN'T BEEN A WHOLE BUNCH OF DOCUMENTS OUT THERE, BUT ALL RIGHT, I HAVE NOTHING FURTHER.

THE COURT: OKAY. MR. KEEHN.

MR. KEEHN: YES. THANK YOU, YOUR HONOR.

IN ADDITION TO THE REASONS THAT YOU'VE ALLUDED TO AS TO

WHY YOU WOULDN'T TAKE THE DEPOSITION WITHOUT THE DOCUMENTS, THERE WERE RESPONSES THAT MR. LOPEZ GAVE IN HIS ORIGINAL DEPOSITION A YEAR AGO, NOW, THAT TO THE EFFECT THAT, WELL THERE ARE MORE DOCUMENTS. I JUST HAVE TO LOOK AT THEM. AND OBVIOUSLY THAT'S A DOOR WE NEED TO CLOSE. IF WE GET THE EVIDENTIARY SANCTIONS, AS MR. HAYES SUGGESTED, WE'VE CLOSED THE DOOR.

AND I, IN TERMS OF THE -- IF HE'S AGREEING TO THE SANCTIONS THEN I DON'T NEED TO ADDRESS HOW HELLACIOUS THIS ARGUMENT OF MARITAL STRESS IS CONCERNED. I DID HAVE SOME DOCUMENTS THAT WERE RECENTLY FILED IN THE DISTRICT COURT THAT BLOW THAT OUT OF THE WATER. BUT IF HE'S AGREEING TO IT, I WON'T ADDRESS IT.

AS FAR AS THE MONETARY SANCTION IS CONCERNED, YOUR HONOR, THIS -- WE TRIED TO CLOSE THE DOOR IN A PROCESS THAT BEGAN SEVEN MONTHS AGO. I SHOULDN'T BE HERE SEVEN MONTHS LATER CLOSING IT ON A CAPITULATION TO A SECOND MOTION TO COMPEL THAT I SHOULDN'T HAVE HAD TO FILE.

IF THERE REALLY ARE NO DOCUMENTS, THEN WHY IS THE RESPONSE, WELL, THERE'S MORE THINGS I NEED TO CHECK AND I CAN'T BE SURE. IF THERE REALLY ARE NO DOCUMENTS, THEN WHY WAS THAT ANSWER NOT GIVEN BACK IN MAY? WHY WAS IT NOT GIVEN BACK IN DECEMBER WHEN IT WOULD HAVE BEEN TIMELY? THERE'S NO EXPLANATION FOR THAT.

THIS IS EXACTLY THE KIND OF GAMESMANSHIP THAT RULE ONE OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE ABHORS. THE PURPOSE OF THE RULES, THEMSELVES, IS TO PROVIDE A

MECHANISM AND A FRAMEWORK FOR THE RAPID AND FAIR  
RESOLUTION OF ISSUES.

NOW, ONE COMMENT, SORT OF, AT LEAST I INFERRED THE ARGUMENT  
FROM THE FACT THAT WE HAVE TWO TO THREE INCHES OF PAPER  
FROM THE ORIGINAL DEPOSITION. AND WHY ARE WE STILL HERE  
A YEAR LATER?

IN ADDITION TO NOT HAVING THE DOCUMENTS PRODUCED, WE ALSO  
HAVE THE POINT THAT THIS CASE WAS BIFURCATED AT MR. LOPEZ'S  
REQUEST. THERE WERE MANY QUESTIONS THAT I COULD EASILY  
HAVE ASKED THE FIRST GO AROUND THAT MIGHT HAVE OBTAINED  
THE NEED FOR FURTHER DEPOSITION, OR AT LEAST REDUCED IT.  
I COULDN'T BECAUSE OF THE CONSTRAINTS PLACED BY THE  
BIFURCATION ORDER. AND I TRIED TO ADHERE TO THAT ORDER.  
SO I HAVE TO TAKE HIS DEPOSITION YET A SECOND TIME.  
AND THEN ONE OF THE LAST REMARKS THAT COUNSEL MADE, I  
THINK, UNDERSCORES THE NEED FOR THE SANCTIONS HAVING BEEN  
IMPOSED BECAUSE IT HIGHLIGHTS THE GAMESMAN-LIKE APPROACH  
THAT MR. LOPEZ HAS TAKEN. AND THAT, THAT COMMENT WAS, HE  
JUST GOT A JOB.

WELL, IF BY THAT HE'S REPRESENTING TO THE COURT THAT UP  
UNTIL THIS TIME HE'S BEEN UNEMPLOYED, I THINK THAT  
EXACERBATES THE CULPABILITY OF MR. LOPEZ IN NOT TIMELY  
RESPONDING. WHAT ELSE WAS HE DOING? WAS HE REALLY  
SPENDING FORTY HOURS A WEEK LOOKING FOR A JOB?

IF HE WAS UNEMPLOYED, CERTAINLY HE WOULD HAVE HAD MORE TIME  
AVAILABLE TO TEND TO HIS DUTIES AS A LITIGANT THAN A  
FULLY-EMPLOYED INDIVIDUAL WOULD. AND EVEN A



FULLY-EMPLOYED INDIVIDUAL IS EXPECTED TO RESPOND AND RESPOND TIMELY TO DISCOVERY OBLIGATIONS.

AS I SAID IN THE BEGINNING, WE DON'T KNOW TODAY, AND WE WON'T KNOW UNTIL THAT ORDER FOR RELIEF IS ENTERED AND SCHEDULES ARE FILED, IF THAT EVER HAPPENS. HOW MUCH THIS ESTATE AND THE GENERAL UNSECURED CREDITORS THAT BROUGHT THIS POSITION HAVE BEEN PREJUDICED BY THIS DELAY AND THE INCURRING OF GAP CLAIMS?

I THINK THAT MESSAGE THE COURT SENT THE FIRST TIME TO MR. LOPEZ WAS, I'LL GIVE YOU ANOTHER CHANCE. I THINK THE MESSAGE THAT THE COURT NEEDS TO SEND TO MR. LOPEZ NOW IS, THIS ISN'T A GAME. AND THERE AREN'T ANY MORE CHANCES. AND YOU DIDN'T PLAY BY THE RULES, AND SO THE SHIELD THAT I PUT IN FRONT OF YOU BEFORE, IS NOW DOWN. AND THESE SANCTIONS ARE DUE AND PAYABLE.

THE COURT: WELL, IN MY VIEW, AT LEAST AT THIS POINT IN TIME AND ON THE PRESENT STATE OF THE RECORD, THE EVIDENTIARY SANCTIONS ARE WARRANTED, AND WILL BE ORDERED IN THE FOLLOWING RESPECTS:

WITH RESPECT TO DEBTOR'S RESPONSE TO REQUEST FOR ADMISSION NUMBER FIVE, THAT WILL BE, AND THE DEBTOR HAS AGREED, THAT WILL BE AN UNQUALIFIED ADMISSION;

DEBTOR WILL BE PROHIBITED FROM PROVIDING EVIDENCE OF PAYMENTS FROM NOVION BETWEEN JANUARY 1 OF 2005 TO JULY 1 OF 2005;

DEBTOR WILL BE PROHIBITED FROM PROVIDING EVIDENCE OF PAYMENTS OF CASH RECEIVED FROM JANUARY 1, 2005 TO JULY 1,

2005;

DEBTOR WILL BE PROHIBITED FROM PROVIDING EVIDENCE OF PAYMENTS OF CASH RECEIVED BY HIS WIFE BETWEEN JANUARY 1, 2005 AND JULY 1 OF 2005. AND I WILL ADD, AS TO THESE PROHIBITIONS, THAT'S TO THE EXTENT NOT ALREADY DISCLOSED TO THE MOVING CREDITORS, THE PETITIONING CREDITORS. IF IT'S BEEN DISCLOSED, THEN IT'S THERE. THERE'S NO PRECLUSION OF USE OF THAT INFORMATION IF IT'S BEEN PREVIOUSLY PROVIDED TO THE PETITIONING CREDITORS, IN THE CONTEXT OF THE DISCOVERY OF THIS CASE;

THE DEBTOR WILL BE PROHIBITED FROM PROVIDING ANY EVIDENCE OF A DEBT IN FAVOR OF LEHMAN BROTHERS OR ANY PAYMENT TO LEHMAN BROTHERS AS OF THE PETITION DATE EXCEPT TO THE EXTENT AND SAME PROVISIO, EXCEPT TO THE EXTENT ALREADY DISCLOSED TO THE COUNSEL FOR PETITIONING CREDITORS;

AND, DEBTOR WILL BE PROHIBITED FROM PROVIDING EVIDENCE OF DEBT IN FAVOR OF AMERICAN EXPRESS, BANK OF AMERICA, BANK CARD, CINGULAR, CITI CARD, HOUSEHOLD BANK, NORTHWEST FLORIDA DAILY NEWS, CITIBANK QUICKEN, TEXACO, VERIZON, UNION BANK, OR MR. GORRILL OR ANY PAYMENT TO ANY OF THEM AS OF THE PETITION DATE, EXCEPT TO THE EXTENT ALREADY PROVIDED THE COUNSEL FOR PETITIONING CREDITORS IN THE CONTEXT OF THE DISCOVERY IN THIS MATTER.

AS TO THE MONETARY SANCTIONS, I AM, AGAIN, GOING TO DEFER AWARDDING THOSE. BUT THEY REMAIN THE SORT OF DAMOCLES OVER MR. LOPEZ. BECAUSE I DON'T KNOW THE ANSWER TO SOME OF MR. KEEHN'S SPECULATION AS TO WHAT'S GOING ON. MR. KEEHN

IS CONVINCED THAT THIS IS A GAME THAT MR. LOPEZ IS PLAYING.  
I'M NOT YET CONVINCED OF THAT.

SO EVENTUALLY WE WILL GET TO THE ANSWER ONE WAY OR THE  
OTHER. AND ONCE I KNOW THE ANSWER, I'LL APPLY THEM, IF  
I DEEM THAT'S APPROPRIATE AT THE TIME. BUT THE  
EVIDENTIARY SANCTIONS AT THIS POINT IN TIME ARE WARRANTED.  
I'LL SIGN AN ORDER TO THAT EFFECT.

MR. KEEHN: THANK YOU, YOUR HONOR.

THE COURT: OKAY. NOW, WE HAVE A STATUS CONFERENCE.  
TIMING.

ARE YOU, NOW, LOOKING AT THE DEPOSITION, MR. KEEHN?

MR. KEEHN: I AM. AND CONSISTENT WITH THE LOCAL  
RULES, I NEED TO CONFER WITH COUNSEL AS TO AVAILABLE DATES.

MR. HAYES: I HAVE TO BE BACK HERE JULY 31ST. THAT'S  
A LITTLE QUICK, BUT I'M GOING TO BE HERE ANYWAY.

THE COURT: JULY 31ST? THAT'S A TUESDAY.

MR. KEEHN: YES.

THE COURT: WHAT TIME IS YOUR HEARING ON THE 31ST?

MR. HAYES: AT 10:00. IT'S A SUMMARY JUDGMENT MOTION,  
SO IT COULD BE IN THE AFTERNOON; SUMMARY JUDGMENT MOTION  
THAT HASN'T BEEN FILED.

THE COURT: WE COULD DO 2:00 P.M. ON THE 31ST. DOES  
THAT WORK?

MR. KEEHN: IT'S CLEAR ON MY CALENDAR, YOUR HONOR.

MR. HAYES: 2:00?

THE COURT: OKAY. AND WE'LL DO THAT AS A FURTHER  
STATUS CONFERENCE. BUT IN THE MEANTIME, I ASSUME THE TWO

OF YOU WILL MEET AND CONFER ON A DEPOSITION DATE. AND THEN  
ONCE THE DEPOSITION IS CONCLUDED, I ASSUME MR. KEEHN,  
YOU'RE PLANNING A MOTION?

MR. KEEHN: I AM.

THE COURT: JUST SO MR. HAYES SEES WHAT'S COMING AND  
THEN WE'LL -- ONCE THAT MOTION'S DECIDED, WE'LL KNOW WHERE  
WE GO NEXT, IF ANYWHERE.

MR. HAYES: GREAT.

MR. KEEHN: THANK YOU, YOUR HONOR.

MR. HAYES: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. WE'LL BE IN RECESS.

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

I, LYNETTE ALVES, OFFICIAL REPORTER, DO HEREBY  
CERTIFY:

THAT I REPORTED IN SHORTHAND THE PROCEEDINGS  
HELD IN THE FOREGOING CAUSE ON THE 25TH DAY OF JUNE, 2007;  
THAT MY NOTES WERE LATER TRANSCRIBED INTO TYPEWRITING  
UNDER MY DIRECTION; AND, THAT THE FOREGOING TRANSCRIPT  
CONTAINS A CORRECT STATEMENT OF THE PROCEEDINGS.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007.

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LYNETTE ALVES, CSR #12534, RPR #61256